IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 356 OF 2007

Mr. Bhimrao Dhondiram Divekar ..... Petitioner

V e r s u s

1. Union of India
Through Secretary G.I. Department
and 25 others. ..... Respondents

Mr. T. George, Advocate for the Petitioner.

Mr. C. A. Ferreira, Asst. Solicitor General for Respondent no.1.

Ms. G. Bhonsale, Addl. Government Advocate for the Respondent nos. 2 and 4.

CORAM: R. M. S. KHANDEPARKAR &
R. S. MOHITE, JJ.

DATE: 14th August, 2007.

ORAL ORDER

Heard.

2. In the present petition, the petitioner is seeking direction to the respondent to consider his representation and to take appropriate decision on his representation in accordance with the Order passed by this Court on 14.03.2007 in Writ Petition No. 446/2006.

3. The petitioner had been serving as Civil Judge, Junior Division and Judicial Magistrate First Class, in Goa, since April, 1989. By Order dated 02.06.2006, the petitioner was sought to be compulsorily retired. Aggrieved by the said Order, the petitioner made representation which came to be rejected on 20.07.2006. Being

aggrieved, the petitioner filed Writ Petition No.446/06, wherein an order came to be passed on 14.03.2007, while disposing the said petition as under:

> "The Order dated 20.07.2006, communicating the rejection of the petitioner's representation to the petitioner, is hereby set aside in view of the Judgment of this Court in the case of ***Ashokkumar Hiralal Lohiya v. Hon'ble High Court of Judicature at Bombay and anr***. reported in ***2007(1) Mh.L.J. 53***.
>
> The petitioner shall be entitled to make a fresh representation which shall be considered by the High Court and shall be forwarded with the recommendations thereon to the State Government of Goa for decision in accordance with the Judgment in ***Ashokkumar's*** case.
>
> The High Court shall forward the representation along with recommendations not later than four weeks on receiving the representation from the petitioner. All issues are left open"

4. It is the case of the petitioner that pursuant to the said Order, the petitioner addressed representation to the Hon'ble Chief Justice of High Court of Bombay at Mumbai on 26.03.2007. It is the grievance of the petitioner that though the said representation was made on 26.03.2007 and there was specific order in Writ Petition No. 446/06 that the same should be forwarded to the Government of Goa within four weeks from the date of receipt of such representation, the High Court failed to forward the same within the said four weeks. It is further contention on behalf of the petitioner that since no communication was received from the High Court regarding the said representation nor any Order was received from the Government,

the petitioner made representation to the Governor of Goa on 12.06.2007. Copies of representation dated 26.03.2007 and 12.06.2007, have been placed on record. Considering these facts, it is sought to be argued on behalf of the petitioner that the relief in the nature of prayer Clause (1) and (4), is warranted as the representation of the petitioner has been left unattended for undue long period and that too inspite of specific direction by this Court that the same should be considered within specified time.

5. On behalf of the respondents, a copy of the letter was placed on record when the matter had come up for hearing yesterday i.e. 13.08.2007. The said letter has been written by Under Secretary (Estt), from the Law Department addressed to the Registrar General of the High Court. The letter refers to the communication dated 19.06.2007 by the Registrar General to the Goa Government on the subject of representation made by the petitioner originally on 19.06.2006 and subsequently a fresh representation dated 26.03.2007. The letter further informs the Registrar General that His Excellency, the Governor of Goa, on consideration of the said representation along with the recommendations of the Review Committee, has approved the said recommendations on 17.07.2007 and thereby the representation by the petitioner has been rejected. The copy of the above letter dated 13.08.2007 was also made available to the learned Advocate for the petitioner.

6. When the matter came up for hearing today, it was inquired from the learned Advocate for the petitioner as to whether the petitioner is aware of the letter dated 03.08.2007 written by the Government of Goa to the Registrar General and it was confirmed by the learned Advocate on taking instructions from the petitioner that

the petitioner is aware of the same.

7. On perusal of the records and upon hearing the Advocate for the petitioner, it is apparent that it is undisputable that by Order dated 14.03.2007 in Writ Petition No. 446/06, the petitioner was allowed to make fresh representation and it was observed that the said representation should be forwarded to the Government of Goa within four weeks along with recommendations from the date of receipt of the representation. To the specific querry as to the date as to when the representation dated 26.03.2007 was received by the High Court, the learned Advocate for the petitioner could not give any satisfactory reply in that regard even after taking necessary instructions in that regard from the petitioner who had been present in the Court throughout the hearing of the matter. Neither the pleadings in the petition disclose the exact date on which the representation dated 26.03.2007 was either forwarded or received by the Office of the High Court at Mumbai, nor there is any documentary proof placed on record or revealed to us disclosing the date of receipt of the said representation by the office of High Court at Mumbai. Obviously, therefore, the contention which is sought to be raised that the High Court had not forwarded the representation along with the recommendation within four week is not based on any cogent material or any proof in that regard.

8. Referring to the letter dated 12.06.2007, it was sought to be argued that the same refers to communication dated 19.06.2007 by the High Court as the said date falls beyond the period of four weeks from 26.03.2007. Merely because the communication dated 19.06.2007 was beyond the period of four weeks from 26.03.2007, that itself cannot be sufficient to conclude that the representation along

with recommendation was forwarded beyond the period of four weeks from the date of the receipt of the representation. In the absence of necessary pleadings in that regard, no conclusion adverse to the respondents about the alleged failure on the part of the respondent, can be drawn. Even assuming that there was some delay in that regard, it cannot render the action by the Review Committee or the decision of the Government to be illegal or unsustainable on that count. Mere delay in forwarding the recommendation of the Review Committee to the Government, would not render the decision on the representation made by the petitioner to be bad in law.

9. Undisputably, the petitioner in this petition, though has made various grievances and has included various prayers in the petition, the learned Advocate for the petitioner has canvassed the argument only in relation to the failure on the part of the High Court to forward the representation along with recommendation within specified period and failure on the part of the authorities to communicate the decision on the recommendations by the High Court till this date, and has not argued any other ground, nor has prayed for any other relief.

10. At this stage, while the Order was being dictated in the Open Court, the learned Advocate for the petitioner sought leave to argue the matter on three other points.

11. On such liberty being sought for, same was granted to the petitioner and thereupon the learned Advocate for the petitioner submitted that for last seventeen years, the petitioner had been in service without any promotion and without any financial up gradation and inspite of being senior most Judicial Officer, he

has been bypassed by many of his Junior Judicial Officers. It is further submitted that the affidavit filed by the Registrar (Legal)of the High Court discloses that the ACRs of the petitioner were far better than other Judicial Officers and in that connection, attention is drawn to Para 8 of the affidavit of Registrar dated 14.12.2006, which was filed in Writ Petition No. 446/2006. It is then contended that the petitioner is a Scheduled Caste candidate and for his supersession, it was necessary for the High Court to consult the Governor in view of the provisions comprised under Article 16 (4-A) of the Constitution of India and that in that regard, there was total failure on the part of the High Court. It is further submitted that the petitioner had made representation dated 23.08.1995, which is still pending and has not yet been decided by the High Court.

12. No other ground has been canvassed in the matter.

13. As already observed above, the petitioner is fully aware as on today, about the letter dated 03.08.2007, by the Under Secretary (Estt) of the Government of Goa, addressed to the Registrar General, which clearly discloses that the representations made by the petitioner on 26.03.2007, after being considered by the Review Committee of the High Court, it was forwarded with its recommendations to the Hon'ble Governor of Goa and on consideration thereof by the Hon'ble Governor of Goa, it has been communicated to the High Court in terms of the said letter dated 03.08.2007, that the Hon'ble Governor has rejected the representation made by the petitioner while concurring with the recommendations of the Review Committee. Undoubtedly, the petitioner is yet to be officially communicated about the said decision. Nevertheless, the petitioner having been made aware of the said decision,

it was expected from the petitioner, who had been the Judicial Officer for seventeen years, to withdraw the petition with liberty to file a fresh petition if he so desires against the decision of which he is made aware in view of the letter dated 03.08.2007, copy of which is on record and is also made available to the petitioner. In fact, there was a specific inquiry in that regard with the Advocate for the petitioner, who after taking instructions from the petitioner, submitted that the petitioner would prefer to withdraw the petition provided the Court issues direction to the respondents in terms of prayer clause (1) and (4). It was informed to the petitioner's Counsel that there was no question of issuing any such direction in case the petitioner seeks to withdraw the petition. If he desires to challenge the Order referred to in the letter dated 03.08.2007 yet to be received by the petitioner, he could do so and the liberty in that regard can always be granted to the petitioner while allowing him to withdraw the petition. Even otherwise, the petitioner could always challenge such Order, in case it is assailable, since that would be a fresh cause of action to the petitioner. The petitioner, thereupon, insisted for arguing the matter.

14. As regards the contention that his earlier petition is still pending in the High Court, attention has been drawn to Exhibit E to the petition which is a copy of the communication addressed to the Registrar of the High Court, Appellate Side, dated 23.08.1995. The communication on the face of it discloses that the same has not been addressed to the competent authority which is required to deal with the representations. Even the communication nowhere requested the Registrar to forward the same to the competent authority who is empowered to deal with the same in accordance with the provisions of law. Undisputably, petitioner has been a Judicial Officer since 1989. Being so, it cannot be heard from the petitioner to say

that his representation of 1995 is still pending with the High Court when it is to the knowledge of the petitioner that the petitioner had not addressed any representation to the competent authority of the High Court who deals with the representation in relation to the subject matter in respect of which he wanted to make the representation in 1995. Besides, in any case, consequent to the decision to retire the petitioner compulsorily and further rejection of his representation against such decision, would ipso facto result in disposal of every other representation, if was made earlier thereto. Even otherwise, in view of the decision taken in the matter whereby the petitioner has been compulsorily retired, the question of considering the representation dated 23.08.1995, regarding the subject of crossing of efficiency bar, does not arise at all at this stage.

15. As regards the grievance regarding failure to comply with the provisions of Article 16(4-A) of the Constitution by the High Court in petitioner's case, one fails to understand how the said provision of law is at all attracted in the case of the petitioner in relation to the alleged supersession of the petitioner by his Junior Judicial Officers. Mere allegation that there has been violation of the fundamental right guaranteed under Article 16(4-A) of the Constitution, on submission that there has been denial of promotion to a scheduled caste Judicial Officer without laying necessary factual foundation and without disclosing how the provisions of Article 16(4-A) are attracted and violated, can be of no help to the petitioner to seek interference in the matter in writ jurisdiction. The contention is totally devoid of substance.

16. Article 16 (4-A) of the Constitution of India provides that "*Nothing in this*

article shall prevent the State from making any provision for reservation in matters of promotion of any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State." This article does not speak of conferment of any fundamental right The Apex Court in ***Ajit Singh & Ors. (II) v. State of Punjab & Ors. [(1999) 7 S.C.C. 209],*** had ruled that both Articles 16(4) and 16(4A) do not confer any fundamental right nor do they impose any constitutional duties but are only in the nature of enabling provisions vesting a discretion in the State to consider providing reservation, if the circumstances mentioned in those Articles so warrant.

17. As regards the claim that the CRs of the petitioner were better than those who had superceded him, reliance is sought to be placed in Para 8 of the affidavit of the Registrar of the High Court filed in earlier petition, which reads thus:-

> "I further respectfully say and submit that with the exception of a few years, the Petitioner through out his career was rated as an average judicial officer. In the Annual Confidential Reports of the Petitioner for the years 1992-93, 1993-94 and 1994-1995, the Petitioner was rated as an "Average" Officer. For the year 1995-1996 his rating was "Above Average". His knowledge of law and procedure was also reported to be "Average". In the Annual Confidential Reports for the years 1999-2000, 2001-02, 2002-03, 2003-04 and 2004-05, he was consistently rated as an "Average" Officer".

Plain reading of the above para, apparently discloses that the petitioner has been

consistently rated as an “Average” Judicial Officer. Very fact that even after working in the Judiciary for seventeen years, the petitioner had not been able to draw any increment or could not secure rating beyond being 'average', that itself discloses that his claim of being better than the other Judicial Officers is totally devoid of substance and hence deserves to be rejected in limine, without any further discussion being necessary on this aspect.

18. For the reasons stated above, we do not find any case being made out for issuance of any of the directions sought for in the matter. It is pertinent to note that inspite of being aware of letter dated 03.08.2007, by the Under Secretary addressed to the Registrar General disclosing disposal of his representation, the petitioner, who had been Judicial Officer for seventeen years and who is presumed to know that he is not entitled to waste the time of any Court merely for the sake of his own pleasure, insisted to argue the matter on totally unsustainable grounds which has resulted in wastage of public time and, therefore, the same warrants dismissal of the petition with exemplary costs.

19. The petition is, therefore, dismissed with exemplary costs of Rs.25,000/- The petitioner shall deposit the said costs within four weeks in the Registry of this Court and on deposit thereof, the same shall be credited to the account of the Goa State Legal Services Authority.

R. M. S. KHANDEPARKAR, J.

R. S. MOHITE, J

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